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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 405

CHARLES SWANSON, PETITIONER,

vs.

MARRA BROTHERS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 6, 1945.

CERTIORARI GRANTED NOVEMBER 5, 1945.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 23, 1945.

IN THE

United States Circuit Court of Appeals

FOR THE THIRD CIRCUIT.

No. 8853.

CHARLES SWANSON,

Appellant,

v.

MARPA BROTHERS, INC.

Appeal from Judgment of the District Court of the United States for the Eastern District of Pennsylvania.

Appendix to Brief for Appellant.

ABRAHAM E. FREEDMAN,
FREEDMAN, LANDY AND LORRY,
906 Jefferson Building,
Philadelphia, Pa.,
Attorneys for Appellant.

International, 236 Chestnut St., Phila. 6, Pa.

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Appendix.

RELEVANT DOCKET ENTRIES.

May 26, 1944.	Complaint, filed.
May 26, 1944.	Summons exit.
May 26, 1944.	Plaintiff's demand for jury trial, filed.
June 3, 1944.	Summons returned: "on May 29, 1944 served", and filed.
June 16, 1944.	Motion to dismiss, filed.
June 19, 1944.	Order to place case on the Argument List, filed.
Sept. 12, 1944.	Argued sur motion to dismiss. C. A. V.
Oct. 16, 1944.	Opinion, Bard, J., granting motion to dismiss, filed.
Oct. 16, 1944.	Judgment dismissing action, filed. 10/17/44 Noted & Notice mailed.
Dec. 14, 1944.	Plaintiff's notice of appeal, filed. 12/15/44 Copy to Rawle & Henderson.
Dec. 14, 1944.	Copy of Clerk's notice to U. S. Circuit Court of Appeals, filed.
Jan. 31, 1945.	Order of Court extending time for filing record on appeal to Mar. 12, 1945, filed. 2/1/45 Noted.
Feb. 7, 1945.	Appellant's designation of record on appeal, filed.
Feb. 14, 1945.	Order of Court directing transmittal of original record to U. S. Circuit Court Court of Appeals, filed.

COMPLAINT.

Plaintiff, Charles Swanson, claims of the above named defendant, the sum of Twenty-five Thousand Dollars ($25,000.00) with lawful interest thereon, upon a cause of action whereof the following is a true statement.

(1) Plaintiff is a citizen and resident of the State of Pennsylvania.

(2) Defendant, Marra Brothers, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of New York and licensed to do business within the State of Pennsylvania.

(3) Upon information and belief, plaintiff avers that at all the times hereinafter mentioned, defendant entered into a contract with the representatives of the S. S. "Meyer London" for the purpose of loading cargo aboard the said vessel at Pier 98, South Wharves, in the City of Philadelphia.

(4) On or about the 14th day of March, 1944, plaintiff was engaged by the defendant as a longshoreman to assist in loading cargo aboard the S. S. "Meyer London" while the said vessel was berthed at Pier 98, South Wharves.

(5) On or about the 16th day of March, 1944, plaintiff commenced his work at 7:00 P. M. o'clock. He was stationed, in the course of his employment, on the dock beside the vessel and engaged in hooking or unhooking certain cases containing airplane parts. While a draft was being hoisted to the deck of the vessel, a life raft, which was part of the ship's equipment, became loosened from its moorings and fell down over the ship's railing to the pier below, striking the plaintiff and causing him the injuries which are more specifically hereinafter set forth.

(6) Disregarding its duty in the premises, defendant, by its agents, servants and employees, was careless and negligent, and the vessel was unseaworthy in:

(a) failing to provide a reasonable and safe place for plaintiff to perform his duties;

(b) permitting the life raft to be improperly secured;

(c) failing to make an adequate inspection;

(d) failing to take adequate precautions to prevent the falling of the life raft;

(e) failing to provide a safe and seaworthy vessel and appliances under the circumstances;

(f) failing to take adequate precautions for the safety of the plaintiff under the circumstances.

(7) By reason of the premises, plaintiff was then and there generally wounded and injured as aforesaid; he suffered a severe sprain and fracture of the right knee and ankle; he suffered a comminuted fracture shaft of the right fibula; he suffered a dislocation of the right ankle; he suffered a concussion of the brain and a severe injury to his head; he suffered a severe shock to his nerves and nervous system; he has suffered excruciating and agonizing aches, pains, mental anguish, shock and disability; he has been unable to assume his usual duties and occupation for a long period of time in the past, and upon information believes and therefore avers that his injuries have become aggravated and that he will be disabled from performing his usual duties and occupation for a long period of time in the future; he has in the past and will in the future be compelled to expend large sums of money for medical care and treatment.

(8) The within cause is brought pursuant to the Maritime Law as modified by Section 33 of the Merchant Marine Act of 1920.

WHEREFORE, CHARLES SWANSON, claims the sum of Twenty-five Thousand Dollars ($25,000.00) and brings this action to recover the same from the defendant.

FREEDMAN AND GOLDSTEIN,
By /s/ ABRAHAM E. FREEDMAN,
Attorneys for Plaintiff.

MOTION TO DISMISS COMPLAINT.

The defendant moves the Court as follows:

1. To dismiss the action on the ground that the Court lacks jurisdiction of the subject matter set forth in the Complaint for the reasons hereinafter set forth;

2. To dismiss the action because the Complaint fails to state a claim against the defendant upon which relief can be granted for the reasons hereinafter set forth.

The allegations set forth in the Complaint state that the plaintiff, a longshoreman, was injured while on the dock and not on the vessel which was being loaded. Although prior to the Longshoremen and Harbor Workers' Act, the Jones Act applied to longshoremen who were injured while performing maritime service on a vessel lying in port in navigable water, injuries to longshoremen off the vessel do not come under the admiralty law and more particularly not under the Jones Act, under which plaintiff's suit has been instituted. The plaintiff's remedy is within the provisions of the Pennsylvania Workmen's Compensation Act, under which the plaintiff has already received, and still is receiving, compensation from the defendant and its insurance carrier, as will more fully appear from the Exhibits A and B attached hereto. The Workmen's Compensation Board of the Commonwealth of Pennsylvania, as aforesaid, has already assumed jurisdiction of the matters set forth in the Complaint and the District Court of the United States does not have jurisdiction to entertain the above case.

In support of the within motion to dismiss, the defendant files herewith the affidavit of W. M. Brown, which is attached hereto as Exhibit A and a copy of an agreement for compensation in the case of Charles Swanson versus Marra Brothers, Inc., on file in the Bureau of Workmen's Compensation of the Department of Labor and Industry, Commonwealth of Pennsylvania, duly certified by the

Workmen's Compensation Board, which is attached hereto as Exhibit B.

RAWLE & HENDERSON,
By /s/ JOSEPH W. HENDERSON,
Attorneys for Defendant,
1910 Packard Building,
Philadelphia 2, Pennsylvania.

EXHIBIT A.

Affidavit of W. M. Brown.

STATE OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } ss.:

W. M. BROWN, being duly sworn according to law, deposes and says, as follows:

That he is Acting District Claim Manager of American Mutual Liability Insurance Co., which is the insurance carrier for Marra Brothers, Inc., under The Pennsylvania Workmen's Compensation Act.

That on April 11, 1944, the plaintiff executed an open compensation agreement between him and Marra Brothers, Inc., as employer, and American Mutual Liability Insurance Co., as insurance carrier, #4,445,087, covering compensation to be paid to him in the amount of $18.00 per week, beginning March 23, 1944, for an injury sustained on March 16, 1944, while engaged as a longshoreman in Philadelphia, Pennsylvania, when a "life raft was loosened by cable, sliding down raft cradle striking man, fracturing right fibula and fracture of right ankle".

That said compensation agreement has been filed with the Bureau of Workmen's Compensation of the Department of Labor and Industry, Commonwealth of Pennsylvania, and been approved by said Bureau.

That commencing March 23, 1944, said Charles Swanson has received from his employer and its insurance carrier pursuant to the provisions of the aforesaid open com-

pensation agreement, and is still receiving, the compensation payment of $18.00 per week and no proceedings have been instituted for the modification or termination of said compensation agreement by supplemental agreement, by order of the Workmen's Compensation Board, or by final receipt.

That the deponent has read the Complaint filed in the above-entitled case and states that the occurrence set forth therein is the same occurrence as described in the aforesaid open compensation agreement for which the plaintiff is being paid compensation.

/s/ W. M. Brown.
W. M. Brown.

Sworn to and subscribed before me this 15th day of June A. D. 1944.

Emma M. Becker,
(Seal) *Notary Public.*

My Com. Expires at the end of the next session of the Senate.

EXHIBIT B.

Agreement for Compensation for Disability or Permanent Injury.

Commonwealth of Pennsylvania
Department of Labor and Industry
Bureau of Workmen's Compensation
Harrisburg, Pa.

Every question must be answered either with appropriate statement or figures, or the word "NONE."

Pa.—Phila.—S.

Date April 11, 1944

Department Accident and Agreement No. 4445087
Employer-Insurer No. 7-45WC-253551-10039

We, the undersigned, agree upon the following facts as to the injuries sustained by the undersigned employe in the employ of his employer:

1. Business of employer Stevedoring
2. Occupation of employe Longshoreman
3. Date of accident 3-16-44
4. Date disability began 3-16-44
5. Place of accident Phila., Pa.
6. Date of birth Age 37
7. Description of accident and nature of injury Life raft was loosened by cable, sliding down raft cradle striking man, fracturing right fibula and fracture of right ankle.
8. (a) Fixed wage $27.00 weekly; $40 monthly; $160 yearly; $1800

   (b) Seasonal: Total wages from all occupations during 12 calendar months preceding accident $1800

   (c) Wage fixed by day, hour or output, during 52 weeks or 12 months preceding accident:

13 Wks. 3 Mo.	From	To	Wages	Board and Lodging	Total Wages
1st. period	.....	.....	$.....	$.....	$.....
2nd. period	.....	.....	$.....	$.....	$.....
3rd. period	.....	.....	$.....	$.....	$.....
4th. period	.....	.....	$.....	$.....	$.....

   Computation: $..... divided by ..... weeks equals $..... average weekly wage $.....

   Note:—Weekly wages must be computed in accordance with Section 309 of the Act.

9. Said employer shall pay to said employe compensation at the rate of $18.00 per week, beginning 3-23-44 payable weekly and medical and hospital expenses, sub- (Weekly—Semi-monthly—Monthly)
   ject to the limits of time and amount provided by the Pennsylvania Workmen's Compensation Act and subject to modification or termination by Supplemental Agreement, Order of the Workmen's Compensation Board or Final Receipt.

10. Compensation is payable for None weeks for the loss of None under section 306 (c).

11. Further matters agreed upon None

Jim Trainer (Signed)
(Witness for employe)

.....
(Witness's Address)

Jim Trainer (Signed)
(Witness for employer)

.....
(Witness's Address)

Chas. Swanson (Signed)
(Signature of employe)
MARRA BROS. INC.
(Employer)
12 South 12th St., Phila. 7, Pa.
(Employer's Address)
AMERICAN MUTUAL LIAB. INS. CO.
(Authorized Agent or Insurance Carrier)
772 Public Ledger Bldg., Phila. 6, Pa.
(Address)
/s/ W. M. BROWN
Acting District Claim Manager
Phila. South

Insurer's office to which correspondence regarding this agreement is to be sent:
American Mutual Liab. Ins. Co.
772 Ledger Bldg., Phila. 6, Pa.
Philadelphia (6) Pa.

Charles Swanson
(Claimant)
1309 E. Moyamensing Ave., Phila. 47, Pa.
(Street) (City)
..... Pennsylvania
(County) (State)

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF LABOR AND INDUSTRY
WORKMEN'S COMPENSATION BOARD
HARRISBURG

The foregoing is hereby certified to be a true and correct copy of Agreement for Compensation in the case of Charles Swanson vs. Marra Bros. Inc. as full, entire, and complete as the same remains on file in the Bureau of Workmen's Compensation of the Department of Labor and Industry.

Certified this 13th day of June 1944.

Daniel G. Murphy
Chairman
WORKMEN'S COMPENSATION BOARD

ATTEST:

W. R. Gallagher
Secretary
WORKMEN'S COMPENSATION BOARD
(SEAL)

OPINION,

On Motion to Dismiss Complaint.

October 16, 1944.

BARD, J.

This action was instituted by a longshoreman against his employer to recover damages under the provisions of Section 33 of the Merchant Marine Act of 1920, 46 U. S. C. A. § 688, popularly known as the Jones Act.[1] The complaint alleges that plaintiff was standing on a dock assist-

[1] The relevant portions of this Act read as follows: "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such actions all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply. . . ."

ing in the loading operation of a vessel lying in the Delaware River, in the harbor of Philadelphia, when he was struck by an object falling from the ship and sustained the injuries upon which the suit is based.

Defendant has filed a motion to dismiss the complaint on the ground that the cause of action alleged by the plaintiff is not within admiralty jurisdiction and the Jones Act because the injuries were sustained while plaintiff was on land. It asserts that plaintiff's remedy for such injuries is under the Workmen's Compensation Act of Pennsylvania, pursuant to the provisions of which he has been receiving compensation payments.

The question here presented is an interesting one and is not free from difficulty. Defendant points out that the decisions of the Supreme Court with respect to injuries to longshoremen have maintained a sharp distinction between those received on the dock (which has been held to be "land", Cleveland T. & V. R. Co. v. Cleveland Steamship Co., 208 U. S. 316, 52 L. Ed. 508; State Industrial Commission v. Nordenholt Corp., 259 U. S. 263, 66 L. Ed. 933) and those received on navigable waters. In the former situation recovery under the admiralty laws has been denied and the plaintiff relegated to a claim under applicable state compensation laws, while in the latter case recovery may be had under the admiralty laws only and state compensation laws are held inapplicable by reason of the exclusive federal jurisdiction established by Article III, Section 2 of the Constitution.

Thus, in Southern P. Co. v. Jensen, 244 U. S. 205, 61 L. Ed. 1086, it was held that a claim under the New York Workmen's Compensation laws could not constitutionally be allowed to a stevedore injured while working aboard a vessel in navigable waters.

Conversely it was thereafter held that the New York Workmen's Compensation Act was applicable to a stevedore who was injured while working on the dock. State Industrial Commission v. Nordenholt Corp., 259 U. S. 263,

66 L. Ed. 933, where the court said at page 272: "When an employee, working on board a vessel in navigable waters, sustains personal injuries there, and seeks damages from the employer, the applicable legal principles are very different from those which would control if he had been injured on land while unloading the vessel. In the former situation the liability of employer must be determined under the maritime law; in the latter, no general maritime rule prescribes the liability, and the local law has always been applied. The liability of the employer for damages on account of injuries received on shipboard by an employee under a maritime contract is matter within the admiralty jurisdiction; but not so when the accident occurs on land."

In 1928 the rule of the Nordenholt case (in which the cause of action had arisen before the passage of the Jones Act in 1920) was reiterated by the Supreme Court in T. Smith & Son v. Taylor, 276 U. S. 179, 72 L. Ed. 520. In that case a longshoreman employed at unloading a vessel at a dock was killed when he was knocked from the wharf into the water. Compensation was awarded to his dependents under the Workmen's Compensation Act of Louisiana and it was contended in the Supreme Court that this award was error because the case was exclusively within the admiralty and maritime jurisdiction of the federal government. This contention was rejected and the award under the state law was upheld.[2]

These decisions would appear to be directly applicable to and controlling of the case at bar. Plaintiff has, however, presented an able argument based on other decisions of the Supreme Court which is not without some force. These decisions begin with Atlantic Transport Co. v. Imbrovek, 234 U. S. 52, 58 L. Ed. 1208, in which the Su-

[2] The converse situation was presented to the Supreme Court in Minnie v. Port Huron Terminal Co., 295 U. S. 647, 79 L. Ed. 1631, in which a longshoreman was injured when knocked from the vessel on to the dock. In that case it was held that the injury was received while the plaintiff was upon navigable waters and hence an award under the State Compensation Act was invalid.

preme Court analyzed the character of the work performed by stevedores and held that it was maritime in character and that therefore an action for injury sustained by a stevedore aboard a vessel in navigable waters was within the "admiralty and maritime jurisdiction" of the federal courts.

Following the passage of the Jones Act in 1920, the Supreme Court held that a stevedore "employed in maritime work on navigable water" was a "seaman" within the meaning of that Act. International Stevedoring Co. v. Haverty, 272 U. S. 50, 71 L. Ed. 157. Said Mr. Justice Holmes at page 52: "It is true that for most purposes, as the word is commonly used, stevedores are not 'seamen'. But words are flexible. The work upon which the plaintiff was engaged was a maritime service formerly rendered by the ship's crew. Atlantic Transport Co. v. Imbrovek, 234 U. S. 52, 62. We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship. The policy of the statute is directed to the safety of the men and to treating compensation for injuries to them as properly part of the cost of the business. If they should be protected in the one case they should be in the other. In view of the broad field in which Congress has disapproved and changed the rule introduced into the common law within less than a century, we are of opinion that a wider scope should be given to the words of the act, and that in this statute 'seamen' is to be taken to include stevedores employed in maritime work on navigable waters as the plaintiff was, whatever it might mean in laws of a different kind."

In 1927 Congress enacted the Longshoremen and Harbor Workers Compensation Act,[2] which has been discussed at length by both parties. This Act provides the exclusive

[2] Act of March 4, 1927, c. 509, §§ 1 to 50, 44 Stat. 1424, 33 U. S. C. A. §§ 901-950.

remedies of longshoremen who are injured while on navigable waters, but does not extend to injuries sustained by longshoremen on land, Johnson v. Marshall, 128 F. 2d 13, certiorari denied 317 U. S. 629, 87 L. Ed. 508. Hence the existing law with respect to the latter situation was not altered by the enactment of this legislation.

The scope of the Jones Act was most recently considered by the Supreme Court in 1943 in the case of O'Donnell v. Great Lakes Dredge & Dock Co., 318 U. S. 36, 87 L. Ed. 596. In that case a deck-hand on a vessel owned by defendant was injured while he was on the dock, at the order of the master of the vessel, assisting in repairing a gasket connecting pipes through which the cargo was discharged. The district court dismissed the plaintiff's action under the Jones Act on the ground that that Act did not apply to injuries to a seaman not occurring on navigable waters, and this ruling was affirmed by the Circuit Court of Appeals. The Supreme Court reversed and held that the plaintiff was entitled to maintain an action under the Jones Act even though the injuries were sustained while he was on land.

Plaintiff's argument, therefore, is that since the Haverty case decided that a "longshoreman" is a "seaman" within the meaning of the Jones Act and the O'Donnell case decided that injuries to seamen are within the Jones Act, whether sustained on land or on water, the necessary conclusion is that the Jones Act applies to injuries sustained by longshoremen in the course of their employment on land. The facts and the reasoning of these two cases, however, do not make that conclusion a necessary one. It will be noted that in the Haverty case the word "seaman" in the Jones Act was construed to include stevedores "employed in maritime work on navigable waters", which leaves undecided the question whether a stevedore employed on maritime work on land would be similarly regarded as within the Act. And in the O'Donnell case the Supreme Court expressly recognized that actions to recover damages for personal injuries sustained on land are

in general subject to maritime law, but held that the Jones Act extended that Act to "seamen" within the orbit of the operation of their ancient right to maintenance and cure for injuries suffered in the service of their vessel, whether on sea or on land. Said Chief Justice Stone at page 41-43: "As we have said, the maritime law, as recognized in the federal courts, has not in general allowed recovery for personal injuries occurring on land. But there is an important exception to this generalization in the case of maintenance and cure. From its dawn, the maritime law has recognized the seaman's right to maintenance and cure for injuries suffered in the course of his service to his vessel, whether occurring on sea or on land . . .

"In its origin, maintenance and cure must be taken as an incident to the status of the seaman in the employment of his ship. See Cortes v. Baltimore Insular Line, 287 U. S. 367, 372. That status has from the beginning been peculiarly within the province of the maritime law, see Calmar S. S. Corp. v. Taylor, supra, and upon principles consistently followed by this Court it is subject to the power of Congress to modify the conditions and extent of the remedy afforded by the maritime law to seamen injured while engaged in a maritime service.

"The right of recovery in the Jones Act is given to the seamen as such, and, as in the case of maintenance and cure, the admiralty jurisdiction over the suit depends not on the place where the injury is inflicted but on the nature of the service and its relationship to the operation of the vessel plying in navigable waters. See Waring v. Clarke, supra; Insurance Co. v. Dunham, supra.

"It follows that the Jones Act, in extending a right of recovery to the seaman injured while in the service of his vessel by negligence, has done no more than supplement the remedy of maintenance and cure for injuries suffered by the seaman, whether on land or sea, by giving to him the indemnity which the maritime law afforded to a seaman in-

jured in consequence of the unseaworthiness of the vessel or its tackle. Pacific S. S. v. Peterson, supra. Since the subject matter, the seaman's right to compensation for injuries received in the course of his employment, is one traditionally cognizable in admiralty, the Jones Act, by enlarging the remedy, did not go beyond modification of substantive rules of the maritime law well within the scope of the admiralty jurisdiction whether the vessel, plying navigable water, be engaged in interstate commerce or not."

That the Supreme Court recognized that a distinction may well be made between a seaman who is a crew member and is traditionally entitled to maintenance and cure under maritime law, and a longshoreman who has been construed to be a "seaman" under the Jones Act, at least to the extent that he works on navigable water, is obvious from its final remarks in its opinion in the O'Donnell case, at pages 43 and 44: "We have no occasion to consider or decide here the question whether a longshoreman, temporarily employed in storing cargo on a vessel, if entitled to recover under the Jones Act for injuries sustained while working on a vessel (compare International Stevedoring Co. v. Haverty, supra, with Nogueira v. N. Y., N. H. & H. R. Co., 281 U. S. 128-137), could recover for an injury received on shore in the circumstances of this case. Compare State Industrial Commission v. Nordenholt Corp., 259 U. S. 263, with South Chicago Co. v. Bassett, 309 U. S. 251, 256."

I am therefore constrained to hold that, in view of the distinction made by the Supreme Court and frequently reiterated in its opinions between injuries sustained by longshoremen while on shore and those sustained while on navigable water, plaintiff is not a "seaman" entitled to maintain the present action under the Jones Act. It is true, as plaintiff has pointed out, that the Nordenholt case involved injuries sustained prior to the time the Jones Act became operative. The same is not true, however, with respect to the Taylor case, which held that the State Compensation

Act was applicable to a longshoreman injured while on the dock, although it does appear to be true that the possibility that the Jones Act was applicable to the execution of the state law was not argued to or considered by the Supreme Court in that case. However this may be, it is not for this court to disregard that decision as well as the distinction uniformly drawn by the Supreme Court, prior to the O'Donnell case, between injuries on land and those sustained on navigable water. If the decision in the O'Donnell case is to be extended to longshoremen injured while working on a dock—an extension which the reasoning of that case and its express reservation of this question make dubious—the extension should be made by that court itself.

The motion to dismiss is granted.

JUDGMENT.

Before BARD, *J.*

AND NOW, to wit: October 16, 1944, in accordance with the opinion of the Court granting defendant's motion to dismiss, it is ORDERED that the above action be and the same is hereby dismissed with costs to the defendant.

By THE COURT,

Attest:

/s/ GILBERT W. LUDWIG,
Gilbert W. Ludwig,
Deputy Clerk.

[fol. 17] IN UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE THIRD CIRCUIT

[Title omitted]

ORDER ASSIGNING HON. JOHN D. MARTIN, SR. AND HON. HARRY E. KALODNER, FOR ARGUMENT—Filed June 7, 1945

And now, to-wit: this 7th day of June A. D. 1945, it is ordered that Hon. John D. Martin, Sr., U. S. Circuit Judge, for the Sixth Circuit, and Hon. Harry E. Kalodner, District Judge, for the Eastern District of Pennsylvania, be, and they are hereby assigned to sit in above case in order to make a full court.

Gerald McLaughlin, Circuit Judge.

[File endorsement omitted.]

[fol. 18] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

[Title omitted]

MINUTE ENTRY—June 7, 1945

And afterwards, to wit, the 7th day of June, 1945, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable John D. Martin and Honorable Gerald McLaughlin, Circuit Judges, and Honorable Harry E. Kalodner, ~~—~~ Judge, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 13th day of June, 1945, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 19] IN UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944

No. 8853

CHARLES SWANSON, Appellant,

v.

MARRA BROTHERS, INC.

Appeal from Judgment of the District Court of the United States for the Eastern District of Pennsylvania

Before Martin and McLaughlin, Circuit Judges, and Kalodner, District Judge

OPINION OF THE COURT—Filed June 13, 1945

PER CURIAM:

The judgment of the District Court is affirmed for the reasons set forth in the opinion of Judge Bard, 57 F. Supp. 456.

[fol. 20] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944

No. 8853

CHARLES SWANSON, Appellant,

vs.

MARRA BROTHERS, INC.

Present: Martin and McLaughlin, Circuit Judges, and Kalodner, District Judge.

On Appeal from the District Court of the United States, for the Eastern District of Pennsylvania

JUDGMENT—Filed June 13, 1945

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed, with costs.

By the Court, Gerald McLaughlin, Circuit Judge.

June 13, 1945.

[File endorsement omitted.]

[fol. 21] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 22] Supreme Court of the United States

Order Allowing Certiorari—Filed November 5, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

[fol. 23] [Endorsed on Cover:] Seamen's Case. File No. 50,108. U. S. Circuit Court of Appeals, Third Circuit, Term No. 405. Charles Swanson, Petitioner, vs. Marra Brothers, Inc. Petition for a writ of certiorari and exhibit thereto. Filed September 6, 1945. Term No. 405 O. T. 1945.